Supreme Court, U.S.
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No. 05-

In the Supreme Court of the United States

BOKOLE ELONGO MOMPONGO,
Petitioner,

v.

ALBERTO R. GONZALES, ATTORNEY GENERAL,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

BOKOLE ELONGO MOMPONGO
Petitioner pro se

11783 NW NARCISSUS STREET
COON RAPIDS, MN 55433
(763) 712-5901

Becker Gallagher Legal Publishing, Inc. 800.890.5001

QUESTIONS PRESENTED

1. Whether the Petitioner has demonstrated a clear probability of future persecution should he return to the DRC.

2. Whether the Petitioner has demonstrated that it is more likely than not that he would be tortured should he return to the DRC.

PARTIES TO THE PROCEEDING

The Petitioner is Bokole Elongo Mompongo, an individual.

The Respondent is Alberto R. Gonzales, Attorney General for the United States

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RULE

Supreme Court Rule 13(1) 1

The Petitioner, Bokole Elongo Mompongo respectfully requests that this Court issue a writ of certiorari to review the judgement entered in this case by the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the Eighth Circuit Court of Appeals, dated May 05, 2005, is reported at No. 04-1481 and is reproduced in Appendix A at 1a-5a. The Decision of the Board of Immigration Appeals, was dated 01/27/2004 and is reproduced in Appendix B at 6a-7a. The decision of the Immigration Judge, sitting in Bloomington, MN was dated 12/11/2002 and is reproduced at Appendix C at 8a-9a. The decision of the Chicago Asylum Office is not available.

JURISDICTION

The opinion of the United States Court of Appeals for the Eighth Circuit was issued on May 05, 2005. This court has jurisdiction under 28 USC 1254(1). This appeal was timely filed within 90 days of the decision of the Eighth Circuit Court of Appeals, dated May 05, 2005. Supreme Court Rule 13(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

An alien found within the boundaries of the United States who is unable or unwilling to return to his country of origin may file for asylum. 8 USC 1158. The asylum claimant states that he/she is unable to return to his/her country of origin because of persecution or a well founded fear of persecution. 8 USC 1101(a)(42)(A). An alien subject to removal from the U.S. may claim withholding of removal by

establishing that his life or freedom would be threatened on the basis of race, nationality, religion, membership in a particular political or social group. 8 USC 1231(b)(3). An alien subject to removal from the U.S. may claim withholding of removal based upon a clear probability of torture, by or at the behest of a government official. 8 CFR 208.16(c).

Reviewal of decisions of the administrative agency are reviewed for issues of law and of evidence. The decision of the administrative agency must be supported by substantial evidence. *Elias-Zacharias v. INS,* 502 US 478 (1992). The Petitioner bears the burden of showing that "the record evidence was so compelling that no reasonable factfinder could fail to find the requisite fear of persecution" *Elias-Zacharias v. INS,* 502 US 478 (1992). Issues of law are reviewed to determine if they are manifestly contrary to law and abuse of discretion. 8 USC 1252(b)(4)(D).

STATEMENT OF THE CASE

The Petitioner arrived in the United States most recently on March 12, 1997 as an H-1B worker. He originally arrived in the United States on 01/01/91 in Atlanta Georgia to attend Mercer College, Macon, Georgia in Electrical Engineering. He returned to DRC on February 11, 1997, but due to conditions of unrest returned to the U.S. one month later.

The Petitioner discontinued his employment with CTI under the H-1B program on or about October of 1997 and moved to Minneapolis, Minnesota to live with a cousin due to his psychological condition regarding the whereabouts of his family in the DRC. He filed an affirmative application for asylum with the Chicago Asylum Office on or about February 21, 2001. This application was referred to the Immigration Court with a notice to appear dated August 14, 2001. He

renewed his claim for asylum along with withholding of removal and application of the United Nations Convention Against Torture at a Master Calendar hearing dated September 18, 2001.

These applications for asylum, withholding of removal and application of the United Nations Convention Against Torture was denied in decision of the Immigration Judge dated December 11, 2002. (Appendix C, pg 8a-9a). The Petitioner subsequently appealed this decision to the Board of Immigration Appeals. This appeal was denied in a decision dated January 27, 2004 in a summary affirmance without opinion. (Appendix B, pg 6a).

The Petitioner subsequently filed a Petition for Review with the Eighth Circuit Court of Appeals dated February 26, 2004. This Petition for Review was denied in a decision dated May 05, 2005. (appendix A, pgs 1a-5a).

STATEMENT OF THE FACTS

The Petitioner first entered the United States on January 01, 1991 at Atlanta, Georgia on an F-1 visa. He attended Mercer University where he pursued a degree in electrical engineering. He completed this degree and entered employment under the H-1B category with CMI (Certified Measurement Instruments) on or about August 20, 1996.

After six months in this position he left to return to his country of origin. He departed the United States on February 11, 1997 and returned one month later on March 12, 1997 due to conditions of unrest in DRC. He returned to his employer in Georgia, CMI.

In May of 1997 the regime of longstanding ruler Mubuto Sese Seko was overthrown by the ADFL forces of Laurent Kabila. (Alliance de Forces Democratiques pour Liberation du Congo-Zaire). As a result, persons associated with the former regime of Mubuto and the MPR party (Movement Populaire de la Revolution, Popular Movement for the Revolution) were persecuted, tortured and some killed.

Close relatives of the Petitioner were forced to go into hiding. His cousin Imana Ingulu, was a spokesman and television personality for the MPR party and Mubuto and was hounded by security personnel of Laurent Kabila. He was forced to go into hiding and his wife was interrogated and tortured to determine his whereabouts. Another cousin Mpeti-E-Meinga, who served in the president's personal security group was also put on the run. He was later forced to flee to the Central African republic and thence to seek asylum in Sweden. The Petitioner's father died shortly after the change in power due to physical and psychological stress following the necessity of hiding to avoid security personnel who were looking for him and his two aforementioned nephews.

The Petitioner subsequently left his employment at CMI in October of 1997 to live with a cousin in Minneapolis, Minnesota due to his fears of the whereabouts of his family and the psychological stress that this caused. Due to his continuing receipt of information regarding the distressed conditions in DRC and the potential harm to himself as evidenced by the plight of family members in DRC the Petitioner filed an application for asylum with the Chicago Asylum Office on or about 02/21/2001.

The Petitioner himself was an active member of the junior wing of the MPR party known as JMPR (Jeunesse du

Mouvement Populaire de la Revolution, Youth of the Popular Movement of the Revolution) from 1986 to 1990. He was vice president of this chapter and participated in party related activities to promote membership and party principles to youth while attending the Institute of Applied Technology in Kinshasa.

The Petitioner's father was among the first Congolese to obtain a formal education outside the country following the countries independence from Belgium in 1960. He attended Washington State University from 1960 to 1965 and obtained a B.S. in physics. His father was the founder and high school principal in his home city of Ntondo in the Equator province. This is also the home of Mubuto.

As a result of years of dedication to public education, president Mubuto appointed him as Secretary of National Education for the province of Equator. He was later awarded the honor of the "Medaille d'Or de'Ordre National du Leopard" (Gold medal from the National Order of the Leopard). This was a special award given to those who contributed to the community and to public life. This insured him VIP status. His father was well known by many around the DRC for this award.

The Petitioner fears that if he is required to return to the DRC he will be tortured or even killed for his association with his two cousins and his father who were widely known as being associated with the Mubuto regime and the MPR party. The Petitioner knows that his own political involvement could be established as a basis for persecution. He has received warnings from his cousin, Mpeti-E-Meinga not to return to DRC.

REASONS FOR GRANTING THE WRIT

I. The threat of harm presented by the Petitioner justifies a clear probability of a threat to life or freedom should he return to DRC.

The Petitioner's claims for asylum, withholding of removal and application of the United Nations Convention Against Torture was denied by the Immigration Judge in a decision dated December 11, 2002. (appendix C, pgs 8a-9a). The BIA affirmed without opinion in a decision of January 27, 2004. (appendix B, pgs 6a-7a). An affirmance without opinion makes the decision of the Immigration Judge the decision of record. (*Falcon Carriche v. Ashcroft*, 350 F.3d 845 (9th Cir. 2003).

The immigration judge indicated that the Petitioner would have been eligible for asylum if he had filed within one year of arrival, or alternately if he filed within a reasonable time following the termination of his non immigrant status. The Immigration Judge found the Petitioner credible. The Eighth Circuit Court of Appeals did not review the claim for asylum, but found that although there was a change in government in DRC following the Petitioner's departure, this only impacted his potential standard of living and that family members of central figures in the former government were not reported to be persecuted. (appendix A, pgs 5a).

To qualify for withholding of removal the Petitioner must show that there is a "clear probability that his life or freedom would be threatened on the basis of race, religion, nationality, membership in a particular political or social group. 8 USC 1231(b)(3). The Petitioner must show that there is a "clear probability" that is "more likely than not" that his life or freedom would be threatened on account of one of the

protected grounds. *INS v. Stevic,* 467 US 407, 429-430 (1984).

The Petitioner claims that he fears persecution based upon his membership in the family unit and also as a former supporter of the Mbuto regime. His cousins (Imanu Ingulu and Mpeti_E-Meinga) have suffered persecution at the hands of the successor regime of Laurent Kabila and now Joseph Kabila his son. His father was also a prominent member of the former regime. The Petitioner claims that his participation in the youth wing of the former regime (JMPR, Youth of the Popular Movement of the Revolution) from 1986-1990 also makes him a target for persecution.

Membership in a family unit that has suffered persecution creates a presumption of a fear of persecution. (see *Mgoian v. INS,* 184 F.3d 1029 (9th Cir. 1998), *Ananeh-Firempong v. INS,* 766 F.2d 621 (1st Cir. 1985). In *Makonnen v. INS,* 44 F.3d 1378 (8th Cir. 1995) the Eighth circuit stated that if a showing of a "pattern or practice" of persecution could be made regarding a particular group than it is not necessary to show that the applicant would be singled out for persecution. (see 8 CFR 208.13(b)(2)(iii)(A))

In *Ananeh-Firempong v. INS,* 766 F.2d 621(1st Cir. 1985) the first circuit court allowed the Petitioner to reopen her case to file for withholding of removal. The court found that the Petitioner's family had been subject to persecution in Ghana and that a class of persons in the Ghanian society had been subject to persecution by the successor government. This class was defined as (1) those associated with the former government; (2) members of the Ashanti tribe; (3) professionals, business people and those that are highly educated. *Ananeh-Firempong* at 623. The court found that it was more likely than not that the Petitioner would be